



Sen. John J. Cullerton

Filed: 3/28/2006

09400HB4357sam001

LRB094 15974 WGH 57812 a

1 AMENDMENT TO HOUSE BILL 4357

2 AMENDMENT NO. _____. Amend House Bill 4357 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Marriage and Dissolution of
5 Marriage Act is amended by changing Section 607 as follows:

6 (750 ILCS 5/607) (from Ch. 40, par. 607)

7 Sec. 607. Visitation.

8 (a) A parent not granted custody of the child is entitled
9 to reasonable visitation rights unless the court finds, after a
10 hearing, that visitation would endanger seriously the child's
11 physical, mental, moral or emotional health. If the custodian's
12 street address is not identified, pursuant to Section 708, the
13 court shall require the parties to identify reasonable
14 alternative arrangements for visitation by a non-custodial
15 parent, including but not limited to visitation of the minor
16 child at the residence of another person or at a local public
17 or private facility.

18 (a-3) Grandparents, great-grandparents, and siblings of a
19 minor child, who is one year old or older, have standing to
20 bring an action in circuit court by petition, requesting
21 visitation in accordance with this Section. The term "sibling"
22 in this Section means a brother, sister, stepbrother, or
23 stepsister of the minor child. Grandparents,
24 great-grandparents, and siblings also have standing to file a

1 petition for visitation rights in a pending dissolution
2 proceeding or any other proceeding that involves custody or
3 visitation issues, requesting visitation in accordance with
4 this Section. A petition for visitation with a child by a
5 person other than a parent must be filed in the county in which
6 the child resides. Nothing in this subsection (a-3) and
7 subsection (a-5) of this Section shall apply to a child in
8 whose interests a petition under Section 2-13 of the Juvenile
9 Court Act of 1987 or under the Adoption Act is pending.

10 (a-5) (1) Except as otherwise provided in this subsection
11 (a-5), any grandparent, great-grandparent, or sibling may file
12 a petition for visitation rights to a minor child if there is
13 an unreasonable denial of visitation by a parent and at least
14 one of the following conditions exists:

15 (A) (Blank); ~~one parent of the child is incompetent as~~
16 ~~a matter of law or deceased or has been sentenced to a~~
17 ~~period of imprisonment for more than 1 year;~~

18 (A-5) the child's other parent is deceased or has been
19 missing for at least 3 months. For the purposes of this
20 Section a parent is considered to be missing if the
21 parent's location has not been determined and the parent
22 has been reported as missing to a law enforcement agency;

23 (A-10) a parent of the child is incompetent as a matter
24 of law; or

25 (A-15) a parent has been incarcerated in jail or prison
26 during the 3 month period preceding the filing of the
27 petition.

28 (B) the child's mother and father are divorced or have
29 been legally separated from each other or there is pending
30 a dissolution proceeding involving a parent of the child or
31 another court proceeding involving custody or visitation
32 of the child (other than any adoption proceeding) ~~during~~
33 ~~the 3 month period prior to the filing of the petition~~ and
34 at least one parent does not object to the grandparent,

1 great-grandparent, or sibling having visitation with the
2 child. The visitation of the grandparent,
3 great-grandparent, or sibling must not diminish the
4 visitation of the parent who is not related to the
5 grandparent, great-grandparent, or sibling seeking
6 visitation;

7 (C) the court, ~~other than a Juvenile Court,~~ has
8 terminated a parent-child relationship and the
9 grandparent, ~~great-grandparent, or sibling~~ is the parent
10 of the person whose parental rights have been terminated,
11 ~~except in cases of adoption.~~ The visitation must not be
12 used to allow the parent who lost parental rights to
13 unlawfully visit with the child;

14 (D) the child is born out of wedlock, the parents are
15 not living together, and the petitioner is a maternal
16 grandparent, great-grandparent, or sibling of the child
17 born out of wedlock; or

18 (E) the child is born out of wedlock, the parents are
19 not living together, the petitioner is a paternal
20 grandparent, great-grandparent, or sibling, and the
21 paternity has been established by a court of competent
22 jurisdiction.

23 (2) The parent, grandparent, great-grandparent, child, or
24 sibling of a parent whose parental rights have been terminated
25 through an adoption proceeding may not petition for visitation
26 rights. Any visitation rights granted pursuant to this Section
27 before the filing of a petition for adoption of the child shall
28 automatically terminate by operation of law upon the entry of
29 an order terminating parental rights or granting the adoption
30 of the child, whichever is earlier. ~~The grandparent,~~
31 ~~great-grandparent, or sibling of a parent whose parental rights~~
32 ~~have been terminated through an adoption proceeding may not~~
33 ~~petition for visitation rights.~~

34 (3) In making a determination under this subsection (a-5),

1 there is a rebuttable presumption that a fit parent's actions
2 and decisions regarding grandparent, great-grandparent, or
3 sibling visitation are not harmful to the child's mental,
4 physical, or emotional health. The burden is on the party
5 filing a petition under this Section to prove that the parent's
6 actions and decisions regarding visitation times are harmful to
7 the child's mental, physical, or emotional health. A finding of
8 harm shall be based upon cessation of the relationship between
9 a minor child and the child's grandparent, great-grandparent,
10 or sibling if the court determines, upon proof by clear and
11 convincing evidence, that:

12 (A) the child had such a significant existing
13 relationship with the grandparent, great-grandparent, or
14 sibling that loss of the relationship is likely to cause
15 emotional harm to the child; and

16 (B) the grandparent, great-grandparent, or sibling
17 functioned as the primary caregiver of the child for a
18 continuous period of 12 months or more.

19 (4) In determining whether to grant visitation, the court
20 shall consider the following:

21 (A) the preference of the child if the child is
22 determined to be of sufficient maturity to express a
23 preference;

24 (B) the mental and physical health of the child;

25 (C) the mental and physical health of the grandparent,
26 great-grandparent, or sibling;

27 (D) the length and quality of the prior relationship
28 between the child and the grandparent, great-grandparent,
29 or sibling;

30 (E) the good faith of the party in filing the petition;

31 (F) the good faith of the person denying visitation;

32 (G) the quantity of the visitation time requested and
33 the potential adverse impact that visitation would have on
34 the child's customary activities;

1 (H) whether the child resided with the petitioner for
2 at least 12 ~~6~~ consecutive months with or without the
3 current custodian present;

4 (I) whether the petitioner had frequent or regular
5 contact or visitation with the child for at least 12
6 consecutive months; ~~and~~

7 (J) any other fact that establishes that the loss of
8 the relationship between the petitioner and the child is
9 likely to harm the child's mental, physical, or emotional
10 health; ~~and.~~

11 (K) whether the grandparent, great-grandparent, or
12 sibling was the primary caretaker of the child for a period
13 of not less than 12 consecutive months.

14 (5) The court may order visitation rights for the
15 grandparent, great-grandparent, or sibling that include
16 reasonable access without requiring overnight or possessory
17 visitation.

18 (a-7) (1) Unless by stipulation of the parties, no motion to
19 modify a grandparent, great-grandparent, or sibling visitation
20 order may be made earlier than 2 years after the date the order
21 was filed, unless the court permits it to be made on the basis
22 of affidavits that there is reason to believe the child's
23 present environment may endanger seriously the child's mental,
24 physical, or emotional health.

25 (2) The court shall not modify an ~~a prior grandparent,~~
26 ~~great-grandparent, or sibling visitation~~ order that grants
27 visitation to a grandparent, great-grandparent, or sibling
28 unless it finds by clear and convincing evidence, upon the
29 basis of facts that have arisen since the prior visitation
30 order or that were unknown to the court at the time of entry of
31 the prior visitation, that a change has occurred in the
32 circumstances of the child or his or her custodian, and that
33 the modification is necessary to protect the mental, physical,
34 or emotional health of the child. The court shall state in its

1 decision specific findings of fact in support of its
2 modification or termination of the grandparent,
3 great-grandparent, or sibling visitation. A child's parent may
4 always petition to modify visitation upon changed
5 circumstances when necessary to promote the child's best
6 interest.

7 (3) Attorney fees and costs shall be assessed against a
8 party seeking modification of the visitation order if the court
9 finds that the modification action is vexatious and constitutes
10 harassment.

11 (4) Notice under this subsection (a-7) shall be given as
12 provided in subsections (c) and (d) of Section 601.

13 (b) (1) (Blank.)

14 (1.5) The Court may grant reasonable visitation privileges
15 to a stepparent upon petition to the court by the stepparent,
16 with notice to the parties required to be notified under
17 Section 601 of this Act, if the court determines that it is in
18 the best interests and welfare of the child, and may issue any
19 necessary orders to enforce those visitation privileges. A
20 petition for visitation privileges may be filed under this
21 paragraph (1.5) whether or not a petition pursuant to this Act
22 has been previously filed or is currently pending if the
23 following circumstances are met:

24 (A) the child is at least 12 years old;

25 (B) the child resided continuously with the parent and
26 stepparent for at least 5 years;

27 (C) the parent is deceased or is disabled and is unable
28 to care for the child;

29 (D) the child wishes to have reasonable visitation with
30 the stepparent; and

31 (E) the stepparent was providing for the care, control,
32 and welfare to the child prior to the initiation of the
33 petition for visitation.

34 (2) (A) A petition for visitation privileges shall not be

1 filed pursuant to this subsection (b) by the parents or
2 grandparents of a putative father if the paternity of the
3 putative father has not been legally established.

4 (B) A petition for visitation privileges may not be filed
5 under this subsection (b) if the child who is the subject of
6 the grandparents' or great-grandparents' petition has been
7 voluntarily surrendered by the parent or parents, except for a
8 surrender to the Illinois Department of Children and Family
9 Services or a foster care facility, or has been previously
10 adopted by an individual or individuals who are not related to
11 the biological parents of the child or is the subject of a
12 pending adoption petition by an individual or individuals who
13 are not related to the biological parents of the child.

14 (3) (Blank).

15 (c) The court may modify an order granting or denying
16 visitation rights of a parent whenever modification would serve
17 the best interest of the child; but the court shall not
18 restrict a parent's visitation rights unless it finds that the
19 visitation would endanger seriously the child's physical,
20 mental, moral or emotional health. ~~The court may modify an~~
21 ~~order granting, denying, or limiting visitation rights of a~~
22 ~~grandparent, great-grandparent, or sibling of any minor child~~
23 ~~whenever a change of circumstances has occurred based on facts~~
24 ~~occurring subsequent to the judgment and the court finds by~~
25 ~~clear and convincing evidence that the modification is in the~~
26 ~~best interest of the minor child.~~

27 (d) If any court has entered an order prohibiting a
28 non-custodial parent of a child from any contact with a child
29 or restricting the non-custodial parent's contact with the
30 child, the following provisions shall apply:

31 (1) If an order has been entered granting visitation
32 privileges with the child to a grandparent or
33 great-grandparent who is related to the child through the
34 non-custodial parent, the visitation privileges of the

1 grandparent or great-grandparent may be revoked if:

2 (i) a court has entered an order prohibiting the
3 non-custodial parent from any contact with the child,
4 and the grandparent or great-grandparent is found to
5 have used his or her visitation privileges to
6 facilitate contact between the child and the
7 non-custodial parent; or

8 (ii) a court has entered an order restricting the
9 non-custodial parent's contact with the child, and the
10 grandparent or great-grandparent is found to have used
11 his or her visitation privileges to facilitate contact
12 between the child and the non-custodial parent in a
13 manner that violates the terms of the order restricting
14 the non-custodial parent's contact with the child.

15 Nothing in this subdivision (1) limits the authority of
16 the court to enforce its orders in any manner permitted by
17 law.

18 (2) Any order granting visitation privileges with the
19 child to a grandparent or great-grandparent who is related
20 to the child through the non-custodial parent shall contain
21 the following provision:

22 "If the (grandparent or great-grandparent, whichever
23 is applicable) who has been granted visitation privileges
24 under this order uses the visitation privileges to
25 facilitate contact between the child and the child's
26 non-custodial parent, the visitation privileges granted
27 under this order shall be permanently revoked."

28 (e) No parent, not granted custody of the child, or
29 grandparent, or great-grandparent, or stepparent, or sibling
30 of any minor child, convicted of any offense involving an
31 illegal sex act perpetrated upon a victim less than 18 years of
32 age including but not limited to offenses for violations of
33 Article 12 of the Criminal Code of 1961, is entitled to
34 visitation rights while incarcerated or while on parole,

1 probation, conditional discharge, periodic imprisonment, or
2 mandatory supervised release for that offense, and upon
3 discharge from incarceration for a misdemeanor offense or upon
4 discharge from parole, probation, conditional discharge,
5 periodic imprisonment, or mandatory supervised release for a
6 felony offense, visitation shall be denied until the person
7 successfully completes a treatment program approved by the
8 court.

9 (f) Unless the court determines, after considering all
10 relevant factors, including but not limited to those set forth
11 in Section 602(a), that it would be in the best interests of
12 the child to allow visitation, the court shall not enter an
13 order providing visitation rights and pursuant to a motion to
14 modify visitation shall revoke visitation rights previously
15 granted to any person who would otherwise be entitled to
16 petition for visitation rights under this Section who has been
17 convicted of first degree murder of the parent, grandparent,
18 great-grandparent, or sibling of the child who is the subject
19 of the order. Until an order is entered pursuant to this
20 subsection, no person shall visit, with the child present, a
21 person who has been convicted of first degree murder of the
22 parent, grandparent, great-grandparent, or sibling of the
23 child without the consent of the child's parent, other than a
24 parent convicted of first degree murder as set forth herein, or
25 legal guardian.

26 (g) (Blank.) ~~If an order has been entered limiting, for~~
27 ~~cause, a minor child's contact or visitation with a~~
28 ~~grandparent, great grandparent, or sibling on the grounds that~~
29 ~~it was in the best interest of the child to do so, that order~~
30 ~~may be modified only upon a showing of a substantial change in~~
31 ~~circumstances occurring subsequent to the entry of the order~~
32 ~~with proof by clear and convincing evidence that modification~~
33 ~~is in the best interest of the minor child.~~

34 (Source: P.A. 93-911, eff. 1-1-05; 94-229, eff. 1-1-06.)"